

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

KYLE WAYNE BRASHEAR,	)	
	)	
Movant,	)	
	)	
v.	)	No. 1:16-CV-210-AGF
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER OF TRANSFER**

This matter is before the court on the motion of Kyle Wayne Brashear to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Doc. 1]. Movant pled guilty to a drug offense and to possession of a firearm as a felon, and was sentenced on July 21, 2014, to 151 months' imprisonment and three years of supervised release. Movant states that he previously brought a motion for relief under 28 U.S.C. § 2255, which this Court denied on the merits on March 24, 2015. *See Brashear v. United States*, No. 1:14-CV-176-AGF (E.D.Mo). Brashear did not appeal from this judgment.

As amended by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2255 now provides that a "second or successive motion must be certified . . . by a panel of the appropriate court of appeals" to contain certain

information. Title 28 U.S.C. § 2244(b)(3)(A) provides that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

Because Brashear did not obtain permission from the United States Court of Appeals for the Eighth Circuit to maintain the instant § 2255 motion in this court, the court lacks authority to grant movant the relief he seeks. Rather than dismiss this action, the court will deny Brashear relief, without prejudice, and transfer the motion to the Eighth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997); *Coleman v. United States*, 106 F.3d 339 (10th Cir. 1997); *Liriano v. United States*, 95 F.3d 119, 122-23 (2d Cir. 1996).

Therefore,

**IT IS HEREBY ORDERED** that the instant motion to vacate is **DENIED**, without prejudice, because movant did not obtain permission from the Eighth Circuit Court of Appeals to bring the motion in this court. *See* 28 U.S.C. § 2255.

**IT IS FURTHER ORDERED** that movant's motion for leave to proceed in forma pauperis [Doc. 2] is **DENIED** as moot.

**IT IS FURTHER ORDERED** that the Clerk shall **TRANSFER** the instant motion to the United States Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1631.

Dated this 9<sup>th</sup> day of August, 2016.

  
UNITED STATES DISTRICT JUDGE